

REMARKS

Claims 1, 13, and 14 are currently being amended. The amendments presented herein do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter these amendments.

1. Rejection of Claims 1-8, 13, and 19 Under 35 U.S.C.

§102(b)/103(a)

Applicant respectfully traverses the rejection of claims 1-8, 13, and 19.

Anticipation:

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicant respectfully believes U.S. Patent 5,529,845 (herein referred to as "Branchesi, et al.") fails to disclose, teach, or

suggest Applicant's currently claimed fibers comprising the currently claimed propylene polymer composition (A). In fact, Branchesi, et al. discloses in col. 1, line 50 - col. 2, line 22,

Accordingly the present invention provides a noncomposite, undrawn fiber for nonwoven fabrics having thermowelding strength equal to or greater than 5 Newtons and/or flexibility higher than 800, comprising a polymer material additivated with organic phosphites and/or phosphonites, HALS (hindered amine light stabilizers) and optionally phenolic antioxidants, said polymer material being selected from:

1) isotactic propylene homopolymers having an isotactic index greater than 90;

2) random copolymers of propylene with ethylene and/or a C₄-C₈ α -olefin; and

3) blends of homopolymers 1) with copolymers 2) , or blends of at least one of the above mentioned homopolymers and copolymers with heterophasic propylene polymers, said heterophasic polymers comprising (by weight):

A) from 10 to 60 parts of a propylene homopolymer, or a copolymer of propylene with ethylene and/or a C₄-C₈ α -olefin, containing over 80% of propylene and having an isotactic index greater than 80 (Fraction A);

B) from 1 to 25 parts of an essentially linear semicrystalline **copolymer of ethylene** with a C₃-C₈ α -olefin, insoluble in xylene at ambient temperature (Fraction B); and

C) from 15 to 87 parts of a **copolymer fraction of ethylene** with propylene and/or a C₄-C₈ α -olefin, and optionally minor quantity of diene, said copolymer fraction containing from 10 to 80% of ethylene and being soluble in xylene at ambient temperature (Fraction C).;

said fiber being obtained by a spinning process operating with a real or equivalent output hole diameter of less than 0.5 mm, with a hole flow-rate ranging from 0.1 to 0.6 g/minute and at a spinning temperature ranging from 260° C. to 320° C., using polymers (1) or (2), or polymer blends (3), having MFR from 5 to 40 g/10 min, and in the

absence of a drawing step. (Emphasis added)

However, Applicant is currently claiming, in part,

A fibre for thermal bonding comprising a propylene polymer composition (A) having an MFR value from 4 to 50 g/10 min, the propylene polymer composition (A) comprising:

ii) a crystalline propylene polymer composition having a melting temperature of 153° C or higher, a content of fraction soluble in xylene at room temperature lower than 10% by weight; the composition containing at least one of (1) at least 0.64 wt% of ethylene and (2) C₄-C₁₀ α -olefin recurring unit and comprising (percent by weight):

I) 20-80% of at least one of a crystalline propylene homopolymer and a crystalline propylene random copolymer containing at least one of (i) up to 1.5% by weight of ethylene and (ii) C₄-C₁₀ α -olefin; and

II) 20-80% of a crystalline random copolymer selected from:

IIa) a **copolymer of propylene** with 0.8 to 10% by weight of ethylene; provided that the difference in the ethylene content between polymer I) and polymer IIa) is at least 0.8 percentage unit with respect to the weight of the (co)polymer concerned; and

IIb) a **copolymer of propylene** with 1.5 to 18% by weight of a C₄-C₁₀ α -olefin and optionally ethylene; provided that the difference in the comonomer content between polymer I) and polymer IIb) is at least 1.5 percentage units with respect to the weight of the (co)polymer concerned; and

IIc) a mixture of copolymer IIa) and copolymer IIb).
(Emphasis added)

Accordingly, Applicant respectfully believes the fibers of Branchesi, et al. comprise ethylene copolymers, whereas Applicant is currently claiming fibers comprising, in part, a crystalline propylene polymer comprising propylene polymers I and II. As such,

for this reason alone, Applicant respectfully believes the current rejection should be withdrawn.

Notwithstanding, the current Office Action states on page 6, line 3-13,

Finally, regarding claims 1, 2, 13 Branchesi et al. teaches the claimed invention above but fails to teach the composition having a melting temperature of 153° C or higher. It is reasonable to presume that melting temperature is inherent to the Branchesi et al. fiber. Support for said presumption is found in the use of like materials and/or like methods, as set forth above, which would result in the claimed property. In the instant case, Branchesi et al. discloses a similar composition to that claimed by applicant for component ii) and using like methods for the production of a nonwoven fiber and fabric. (See Col 1, lines 50-67) The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would inherently have been present once the Branchesi et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

However, as outlined *supra*, Applicant believes the fibers of Branchesi, et al. relate to copolymers of **ethylene**, whereas Applicant is currently claiming fibers comprising a propylene polymer composition (A), which comprises, in part, 20-80% of a crystalline **propylene** random copolymer selected from **propylene** copolymers IIa-IIc. Therefore, Applicant respectfully believes the Examiner's reliance on inherency, as well as *In re Fitzgerald* and *In re Best*, is misguided given the fibers of Branchesi, et al. are produced from compositions clearly different than those currently claimed by Applicant. In fact, to establish inherency, the extrinsic evidence must make clear that the missing descriptive

matter is **necessarily** present in the thing described in the reference. See *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999), and MPEP §2163.07(a).

In light of the above, Applicant respectfully believes the current anticipation rejection should be withdrawn.

Obviousness:

The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness.

Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2142.

Arguments regarding Branchesi, et al. *supra* are incorporated herein by reference in their entirety.

As outlined above, Applicant respectfully believes the fibers

of Branchesi, et al. relate to copolymers of **ethylene**, whereas Applicant is currently claiming fibers comprising a propylene polymer composition (A), which comprises, in part, 20-80% of a crystalline **propylene** random copolymer selected from **propylene** copolymers IIa-IIc. Additionally, not only does Applicant believe there is no motivation in either Branchesi, et al., nor U.S. Patent 4,755,546 (herein referred to as "Hechenbleikner, et al."), to modify Branchesi, et al. in an attempt to arrive at Applicant's currently claimed fibers, but the Examiner has not explained *why*, absent Applicant's specification, one would have arrived at Applicant's currently claimed fibers comprising the currently claimed polymer compositions, wherein the polymer compositions comprise the currently claimed properties. In particular, Applicant respectfully believes the Examiner has not explained *why*, absent Applicant's express disclosure in the current application, one would have deviated from, and abandoned using the ethylene polymers disclosed in Branchesi, et al. in lieu of Applicant's currently claimed crystalline **propylene** polymer composition having: (a) a **melting temperature of 153°C or higher**; (b) a content of fraction soluble in xylene at room temperature **lower than 10% by weight**; (c) at least one of (1) **at least 0.64 wt% of ethylene** and (2) **C₄-C₁₀ α-olefin recurring unit**; wherein the crystalline propylene polymer comprises (percent by weight): (d) 20-80%, of a crystalline **propylene** homopolymer or crystalline **propylene** random copolymer

containing at least one of (i) up to 1.5% by weight of ethylene and (ii) C₄-C₁₀ α-olefin; and (e) 20-80% of a crystalline propylene random copolymer selected from: (f) a copolymer of propylene with 0.8 to 10% by weight of ethylene; provided that the difference in the ethylene content between polymer I) and polymer IIa) be at least 0.8 percentage unit with respect to the weight of the (co)polymer concerned; (g) a copolymer of propylene with 1.5 to 18% by weight of a C₄-C₁₀ α-olefin and optionally ethylene; provided that the difference in the comonomer content between polymer I) and polymer IIb) is at least 1.5 percentage units with respect to the weight of the (co)polymer concerned; and IIc) a mixture of copolymer IIa) and copolymer IIb). In fact, the Examiner has not clearly enumerated why, absent Applicant's specification, one would have deviated from the express disclosure of Branchesi, et al. and would have used Applicant's currently claimed crystalline propylene polymer composition comprising (a)-(g) above. However, this is the Examiner's initial burden to establish a *prima facie* case of obviousness. See MPEP §2142.

As for the Examiner's reliance on *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) throughout the current Office Action, as well as in the rejection of claim 4, Applicant respectfully believes the facts of *In re Aller* are clearly different than those of the instant application. See MPEP §2144 (III). In particular, *In re Aller* relates to identical processes (i.e.,

identical in steps and constituents of the process), in which the **only** difference between appellants process and the prior art resided in the temperature in which the process was carried out, and the concentration of the sulfuric acid used. This, however, is markedly different than the facts before the Examiner in the instant application. In fact, as outlined *supra*, Applicant respectfully believes the currently claimed fibers comprising the crystalline **propylene** polymer composition (ii) comprising, in part, components IIa-IIc are markedly different than those of Branchesi, et al. Accordingly, Applicant respectfully traverses the Examiner's reliance on *In re Aller, Id.*

In light of the above, Applicant respectfully believes the current obviousness rejection should be withdrawn.

2. Rejection of Claim 14 Under 35 U.S.C. §103(a)

Applicant respectfully traverses the rejection of claim 14.

As outlined *supra*, The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness.

Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must

be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2142.

Arguments regarding Branchesi, et al. *supra* are incorporated herein by reference in their entirety. As for U.S. Patent 5,607,798 (herein referred to as "Kobylyvker, et al."), Applicant respectfully believes Kobylyvker, et al. fails to remedy the deficiencies of Branchesi, et al. In particular, as with Branchesi, et al., Kobylyvker, et al. alone, or in combination with Branchesi, et al., fails to disclose, teach, or suggest Applicant's currently claimed fibres comprising propylene polymer composition (A) having an MFR value from 4 to 50 g/10 min, wherein the propylene polymer composition (A) comprises the currently claimed crystalline propylene polymer component (ii), much less Applicant's currently claimed composite non-woven fabric comprising the aforementioned fibers.

In light of all the arguments provided *supra* in section 1, as well as those provided above in section 2, Applicant respectfully believes the current obviousness rejection should be withdrawn.